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U.S. Citizenship  
and Immigration  
Services

JAN 31 2005

FILE:

EAC 01 153 51489

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reconsider an action by [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner must be filed within 30 days of the decision the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before the period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and way beyond the control of the applicant or petitioner.

The record reflects that the AAO issued its decision dismissing the petitioner's appeal on August 15, 2003. The instant motion was filed on November 21, 2003. As cited in the regulation above, in order to properly file a motion, the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this instance, the motion was received by CIS 98 days after the AAO's decision was issued. Accordingly, the motion was not timely filed. The petitioner's excuse that the delay in filing the motion was due to the fact that "[d]ocuments had to be collated and obtained," does not demonstrate that the delay was reasonable or beyond the petitioner's control.

**ORDER:** The motion is dismissed. The previous decision of the AAO will be affirmed and the petition will be denied.